Department of Energy

ROCKY FLATS FIELD OFFICE
P O BOX 928
GOLDEN COLORADO 80402 0928

DEC 3 0 1994

94-DOE-12952

Mr Martin Hestmark
U S Environmental Protection Agency, Region VIII
ATTN Rocky Flats Project Manager, 8HWM-FF
999 18th Street, Suite 500
Denver, Colorado 80202-2405

Mr Joe Schieffelin
Hazardous Waste Facilities Unit Leader
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, Colorado 80222-1530

Gentlemen

Enclosed are the minutes from the December 1, 1994, Applicable or Relevant and Appropriate Requirements (ARARs) Working Group meeting Also enclosed is the responsiveness summary prepared by the Department of Energy to address the verbal comments made regarding the "Draft Master List of Potential Federal and State ARARs for the Rocky Flats Environmental Technology Site", which I faxed to you earlier this week These comments were made by the Environmental Protection Agency (EPA), the Colorado Department of Public Health and Environment, and the Attorney General's Office at the December meeting

The next ARARs Working Group meeting has been scheduled for Friday, January 6, 1995, from 9 00 a m to 11 00 a m at the EPA Conference Center Please contact me at 966-4839 if you should have any questions regarding this transmittal

Sincerely,

Steven W Slaten
IAG Project Coordinator
Environmental Restoration

Enclosure

cc w/Enclosure:
J. Alquist, EM-452, HQ
C. Gesalman, EM-452, HQ
J Roberson, AMER, RFFO
F. Lockhart, ER, RFFO
B Thatcher, ER, RFFO
T Howell, OCC, RFFO
G Hill, ES&H, RFFO
J Stewart, SAIC
S Stiger, EG&G
L Brooks, EG&G
Administrative Record

Response Summary to the ARAR Working Group Meeting, 12/1/94

• Indicates that DOE committed to an action

p viii Discussion about TBC is not consistent with that specified in the IAG

Clarification The sentence in question reads "However, provisions which dictate how ARARs and TBCs are to be identified are not specified in the IAG " The intent of the sentence was that "how" ARARs are to be identified is not specified in the IAG, i e , what guidelines, etc should be followed, not that which party is ultimately responsible for the ARARs determination is not specified in the IAG For further clarification, suggest adding the sentence from the IAG "EPA, after consultation with the State, will determine the ARARs to be applied at the Rocky Flats Site" to the paragraph in question

• p vi Clarification of language regarding DOE Orders and environmental statutes

Clarification Suggest changing paragraph in question to read Of particular importance to the RFETS is the inclusion of DOE Orders along with or in lieu of other identified ARARs and TBCs Since DOE Orders are not promulgated standards, they do not qualify as ARARs under the CERCLA definitions Nevertheless, DOE Orders, whether promulgated or not, may be contractually enforceable on contractors that operate or manage a DOE facility To the extent that DOE Orders supplement the implementation of an identified ARAR, they will be treated as TBCs to develop a protective remedy Where DOE Orders conflict with an identified ARAR, either contractual relief from DOE, a waiver from the ARAR from the agencies if the DOE Order is more restrictive, a regulatory variance, statutory inconsistency determinations (i e , RCRA Section 1006), or a CERCLA waiver may be required Generally, it is anticipated that if a DOE Order is more restrictive than an identified ARAR, then compliance with the DOE Order will also mean compliance the ARAR

DOE Orders that are promulgated are considered to be regulations and may qualify as potential ARARs under the CERCLA definitions

p ix "specifically addresses" v "fully addresses"

Correction The basic criterion for determining if a requirement is applicable is that it directly and ~~fully~~ specifically addresses or regulates

Also on p ix, cite at bottom of page contains a typographical error It should read 55 FR 8743 instead of 58 FR 8743

p 1 Further explanation of why NRC standards are not relevant and appropriate

Clarification NRC regulations state that DOE is exempt from NRC regulations Consequently, where EPA (and presumably Congress) has explicitly decided that a requirement is not appropriate to a situation, that requirement will not be appropriate for such a situation at a CERCLA site However, if DOE Orders do not address an action or containment covered by a NRC

standard, then the NRC standard may be appropriate

Suggest adding 10 CFR 835 to the Master List as applicable

• p.3 Why is 10 CFR 61 a TBC rather than relevant and appropriate?

The Part 61 regulations establish the procedures, criteria, and terms and conditions that apply to the issuing of licenses for the land disposal of radioactive wastes received from other persons The application of these requirements to the cleanup of RFETS is inappropriate because DOE has been exempted from the NRC regulations See above comment for further clarification

p 3 Add 6 CCR 1007-1 part 14

Part 14 Licensing Requirements for Land Disposal of Low Level Radioactive Waste Establishes procedures, criteria, and terms and conditions upon which the Department issues licenses for the land disposal of low-level radioactive wastes received from other persons

Colorado regulations establish standards for protection against ionizing radiation resulting from activities conducted pursuant to licenses or registrations issued by CDPHE To the extent that RFETS is exempted form CDPHE license or registration requirements, the Standards for Protection Against Radiation are not applicable

It may appear that certain regulations from the Standards for Protection Against Radiation are relevant to CERCLA actions at RFETS, however, application of these requirements to the cleanup of RFETS is inappropriate because DOE has been exempted from the State Standards for Protection Against Radiation regulations

p 4 Add Regulation No 3 (5 CCR 1001-5)

Agree, Regulation No 3 will be added to the Master List

p 5 NESHAPS may also be a chemical specific ARAR

Agree, Master List will reflect that NESHAPS may also be chemical-specific

p 5 Comment regarding the accuracy of the second paragraph under comments

Suggest deleting second paragraph under comments

p 6 Water Quality-Gold Book as relevant and appropriate

Section 121(d)(2)(B)(i) of CERCLA as implemented by the NCP (40 CFR 300 430(e)(2)(i)(E) specifies that WQC established under Sections 303 and 304 of the CWA shall be attained where relevant and appropriate under the circumstances of the release

Suggest no changes because the comment states that WQC may be appropriate

• p 7 Clarification regarding the AEA exception DOE agreed to put them into two sentences to clarify meaning

Clarification The question is "Does this mean statewide standards can be left out if they are AEA related?" Statewide surface water standards which address AEA regulated radionuclides will not be considered potential ARARs Non-AEA regulated radionuclides that have statewide surface water standards and that are associated with a use classification will be considered potential ARARs

The Master List will reflect the change in order of the statements regarding filing a petition with the WQCC and "when permanent structures are put in place "

The sentence "When permanent structures are put in place " will be changed to a "if" and "then" statement

The general legal issues of general applicability, enforceability, promulgation and point of compliance will be discussed by the agencies legal representatives

p 8 Why are the Toxic Pollutant Effluent Standards listed as A rather than C?

The Toxic Pollutant Effluent Standards are related to the NPDES permit provisions Agree to change type from action-specific to chemical-specific potential ARAR, however, DOE also suggests adding a note in the comment section stating that if the permitted units were used, the NPDES permit discharge standards would have to be met

p 9 Why is the NPDES permit considered substantive?

Permit itself is substantive? Not intent of comment language An on-site discharge from a CERCLA site to surface waters must meet the substantive NPDES requirements, but need not obtain an NPDES permit nor comply with the administrative requirements of the permitting process, consistent with CERCLA section 121(e)(1) An offsite discharge from a CERCLA site to surface waters is required to obtain an NPDES permit and to meet both the substantive and the administrative NPDES requirements

When a NPDES permit has been issued to a site, the effluent limitations under the discharge permit would have to be met Compliance is determined by whether the permit holder is exceeding its effluent limits, not by whether water quality in the stream exceeds the water quality standards An example is OU6 Two terminal ponds that are covered by the existing, although expired but extended, NPDES permit are located within OU6 In developing the potential ARARs for OU6, effluent limitations within the NPDES permit and the Federal Facilities Compliance Agreement were considered as potential ARARs

• p 9 Wetlands, how does this fit with NEPA not applying to CERCLA?

The wetlands requirements listed in 10 CFR Part 1022 are promulgated regulations not associated with NEPA regulations found at 10 CFR Part 1021 In addition, it is consistent with DOE's NEPA/CERCLA policy which is that CERCLA s considerations of environmental impacts

satisfy NEPA's requirements for such consideration

- **p.10 How is Interagency cooperation considered substantive?**

While EPA interprets CERCLA Section 121(e) to exempt lead agencies from obtaining Federal, State or local permits or from complying with the administrative requirements for on-site remedial activities, EPA strongly recommends that lead agencies, nevertheless, consult as specified with administering agencies for on-site actions The administering agencies have the expertise to determine the impacts of a remedial action on particular aspects of the environment and what steps should be taken to avoid and mitigate adverse impacts

Suggest clarifying comment to read If an endangered species is found, then interagency cooperation is required Otherwise interagency cooperation is a TBC and the policy of DOE is that interagency cooperation will be done

- **p 17 Why aren't the SDWA regulations applicable? [40 CFR 141]**

The SDWA regulations are applicable to public water systems having at least 15 service connections or serving at least 25 year-round residents RFETS does not have a public water system which meets this definition

Suggest modifying the last sentence to read "When these structures are in place, and the drinking water classifications are removed, the MCLs (MCLGs) will be not be relevant and appropriate "

Because of the current use classifications imposed on groundwater beneath RFETS the SDWA regulations may be relevant and appropriate to groundwater

p 18 Explanation of on-site actions-explain that this only applies to the CERCLA ARARs

Suggest explaining/defining on-site actions at the end of the ARAR Definition section on p v In On-site means the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for implementation of the response action When determining the extent to which on-site CERCLA response actions must comply with other environmental and public health laws, one should distinguish between substantive requirements, which may be applicable or relevant and appropriate, and administrative requirements, which are not

Substantive requirements are those requirements that pertain directly to actions or conditions in the environment Examples of substantive requirements include quantitative health- or risk-based restrictions upon exposure to types of hazardous substances (e g MCLs establishing drinking water standards for particular contaminants), technology-based requirements for actions taken upon hazardous substances (e g incinerator standards requiring particular destruction and removal efficiency), and restrictions upon activities in certain special locations (e g standards prohibiting certain types of facilities in floodplains)

Administrative requirements are those mechanisms that facilitate the implementation of the

substantive requirements of a statute or regulation Administrative requirements include the approval of, or consultation with administrative bodies, consultation, issuance of permits, documentation, reporting, recordkeeping, and enforcement In general, administrative requirements prescribe methods and procedures by which substantive requirements are made effective for purposes of a particular environmental or public health program
On-site response actions must comply with substantive requirements and not administrative requirements

Suggest adding the following language to page 18 for further clarification "This list is for CERCLA ARAR purposes only"

p 18 Why won't the RCRA permit be an ARAR

Only the substantive sections of RCRA are required to be met when identified as a potential ARAR during a CERCLA remedial action In most instances, areas of the facility that are covered under an existing RCRA permit will not be included within a CERCLA remedial action

p 18 Add Part 261 to the list.

Following Part 261 is referenced in the comments to generator standards, however, the Master List will be revised to specifically add Part 261

p 21 Subpart E of 264-Should operating records be included?

Subpart E of 264 Manifest System, Recordkeeping and Reporting

No, operating records fit the definition of administrative requirements rather than substantive requirements and are not required to be followed for on-site remedial actions (From a practical perspective some sort of recordkeeping may be done as part of the ROD but it is not an ARAR)

p 22 Alternative Concentration Limits

The comment from the meeting was to revise comment on the Master List and remove references of "that we will" and just that it is planned or intended Suggest revising comment reads DOE plans to seek ACLs that will maintain the designated use of the water quality at the RFETS boundary

• p 22 "Standard not exceeded for three consecutive years" - Where did this come from?

6 CCR 1007-3, 264 96(c) Compliance period If the owner or operator is engaged in a corrective action program at the end of the compliance period specified in paragraph (a) of this section, the compliance period is extended until the owner or operator can demonstrate that the ground water protection standard of Section 264 92 has not been exceeded for a period of three consecutive years

• p 23 Why is this comment included?

The purpose of the comment is to address potential concerns of the integration of RCRA Corrective Action provisions and CERCLA remedial action provisions

• p 24 Closure and Post-Closure Care - Why is DOE referring to "substantive?"

Only substantive requirements are required to be followed for CERCLA on-site remedial actions

The comment to "Use and Management of Containers" will be deleted from the Master List

• p 26 Revise Master List to include the RCRA standards for waste piles, land treatment, landfills

Revision will be made The RCRA standards for these types of units will be typed as potential action specific ARARs

p 26 CAMU cannot be a shield (Landfills)

DOE recommends leaving the comment in as written

• p 36 DOE will check on why the TSCA Spill Cleanup policy is typed as a TBC rather than relevant and appropriate since the policy is promulgated (Why not C ?)

The PCB Spill Cleanup Policy describes the level of cleanup required for PCB spills occurring after May 4, 1987 Because it is not a regulation and only applies to recent spills (reported within 24 hours of occurrence), the Spill Policy is not ARAR for Superfund response actions (Guidance on Remedial Actions for Superfund Sites with PCB Contamination)

The CERCLA Compliance with Other Laws Manual Part II states that the requirements under 40 CFR Part 61 (761), Subpart G, while not potential ARARs, are TBCs for CERCLA actions, particularly with respect to cleanup of soils contaminated with PCBs

RH 4 35 State Radiation Standard for Plutonium in Soil

Unclear on area CDPHE referencing 4 35=Disposal by Release into Sanitary Sewerage

RH 4 60 Permissible Levels of Radioactive Material in Uncontrolled Areas

This requirement states that special construction techniques be used where contamination of the soil is in excess of 2 0 disintegrations per minute of plutonium per gram of dry or square centimeter of surface area There are no DOE Orders which address this area, consequently, this requirement will be added to the Master List and typed as a potential action-specific ARAR